IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

WP(C).No. 1161 of 2007(L)

PETITIONERS:
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1. ASHLY VARGHESE, AGED 21 YEARS,
S/O. GEEVARGHESE, PUTHENVEETTIL WHITE HOUSE,
CHITTUMALA, KALLADA EAST, KOLLAM.

2. DHIVIN PHILIP PERUMAL, AGED 20 YEARS,
S/O. DR. PETER MATHEW,
KALLUMPURATHUKADAVIL, KALLAMKADAVU,
PATHANAPURAM, KOLLAM.

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT,
PUBLIC HEALTH DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. MAHATMA GANDHI UNIVERSITY,
REPRESENTED BY THE REGISTRAR, KOTTAYAM.

3. BOARD OF STUDENTS' GRIEVANCES,
REPRESENTED BY THE VICE CHANCELLOR OF MAHATMA
GANDHI UNIVERSITY, WHO IS THE CHAIRMAN OF THE
BOARD, KOTTAYAM.

4. CONTROLLER OF EXAMINATIONS,
MAHATMA GANDHI UNIVERSITY, KOTTAYAM.

5. PROFESSOR - IN - CHARGE OF DIRECTOR,
SCHOOL OF MEDICAL EDUCATION,
MAHATMA GANDHI UNIVERSITY, GANDHI NAGAR,
KOTTAYAM.

6. THE PRINCIPAL (IN CHARGE),
SCHOOL OF MEDICAL EDUCATION,
MAHATMA GANDHI UNIVERSITY, GANDHI NAGAR,
KOTTAYAM.

ADDL.R7. THE VICE CHANCELLOR,
MAHATMA GANDHI UNIVERSITY,
KOTTAYAM.

(ADDL.R7 IMPLEADED AS PER ORDER IN I.A.NO.1209/2007 DATED 9/2/2007)

BY ADV.SRI.V.A.MUHAMMED, SC, M.G.UNIVERSITY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

W.P.(C) NO. 1161 OF 2007

Dated this the 9th day of February, 2007

J U D G M E N T

The petitioners are accused persons 4 and 5 in a criminal case in relation to an alleged occurrence on 21/10/2005, in the premises of an educational institution. Following Ext.P1 FIR, the investigation has been completed and final report laid and the competent criminal court has taken cognizance of the offences punishable under the Indian Penal Code and the Kerala Prohibition of Ragging Act, 1998, hereinafter referred to as the "Act".

2. Though the Act enjoins upon head of the institution, to place an accused under suspension upon receipt of a complaint and to forward the complaint within seven days to the competent police officer, as of now, the then Principal of that institution is also arrayed as an accused person in the criminal cases on different counts under the I.P.C and may be, other laws on the allegation that the Principal refused to act on the complaint of the

victim and her relatives. Whatever that be, the petitioners were not placed under suspension by the then Principal.

3. The Principal that succeeded under orders of the University which directly runs the institution, placed the petitioners under suspension on 23/11/2005. By Ext.P4 judgment, this Court directed that any disciplinary proceedings against the petitioners be completed and the pendency of the criminal case shall not stand in the way of disciplinary proceedings. There was a specific direction in that case to the University and the Board of Students' Grievances to complete the enquiry and take whatever action is proposed to be taken, so that, if readmitted, the petitioners can continue their studies. Final decision was directed to be taken within a period of six weeks from the date of production of Ext.P4 judgment which was issued by this Court on 14/11/2006.

4. All that happened thereafter is that, the Syndicate

considered the question of continuing the suspension of the petitioners and at its meeting on 22/12/2006, took up an agenda item relating to reinstatement of suspended students, made reference to Ext.P4 judgment and finally resolved to continue the suspension of the students for another six months with effect from 23/11/2006.

5. To say the least, the aforesaid action of the Syndicate of the M.G. University was clearly contrary to the object sought to be achieved by Ext.P4 judgment. When the writ court issues a direction in exercise of its constitutional powers to ensure certain facts situation to occur, it is not for any authority of any University under the different legislations to act contrary and create bottle necks in the flow of justice. By taking the aforesaid decision, to continue the suspension for six months from 23/11/2006, the Syndicate has, in effect, stalled the proceedings that were directed to be held in terms of Ext.P4 judgment. The Board of Students' Grievances could, obviously, therefore not

carry out the directions in Ext.P4 judgment. Still further, even if the petitioners are accused persons, they have not been found guilty by any competent court. The penalty of dismissal from the institution in terms of Section 5 of the Act is a consequence that has to follow conviction.

6. The Act does not authorise the educational institution or the University to dismiss a student under the provisions of that Act. But the conduct referable to the applicability of that Act is a situation which should be sufficient guidance for the head of the institution to act in the realm of discipline which is vested in every Principal or Head Master of an educational institution by the very fact that, he is the head of an educational institution. The power to remove a student from an educational institution need not be statutorily conferred. The power to admit takes with it the power to remove and the power to remove on a count of discipline is a necessary concomitant of the powers of the head of the institution, be it the Principal or the Head Master.

7. When action is taken against a student on counts of discipline, it is required to terminate and reach a logical conclusion at the earliest. This would enable the student to carry on with his education, if he is found to be entitled to continue in the institution. If otherwise, he can proceed in accordance with law by seeking adequate remedies including before the Board for redressal of grievances as is provided by Chapter 27 of the Statutes that govern the M.G. University. Bereft of that, to leave the academic life of a person in a state of suspended animation for more than a year, in my considered view, tends even to impinge on his fundamental rights.

8. It is quite surprising that even after the petitioners were kept under suspension by the present Principal in office, apparently no steps have been taken in exercise of disciplinary authority against them. May be that the Principal now in office, does not have any Statute to guide, by providing him lawful authority within the scheme of the M.G.University Act and

Statutes. In an institution directly under the University, he may bonafide rest on the assumption that in the absence of any statutory rules, he does not have the power. But for the reasons which have already been stated above, the disciplinary power and authority of the head of institution, the Principal in this case, emanates from his office as the head of institution and his writ has to run in the realm of discipline in the institution and if he is the authority to admit, he necessarily has the authority to dismiss or take any other disciplinary action as could be, in the realm of education, subject of course, to the interference by statutory authorities including by the Board of Students' Grievances in terms of Chapter 27 of the Statutes of the M.G.University.

9. At any rate, there is no legal foundation nor any statutory sanction to let the petitioners continue without any further educational avenues being open to them. Under such circumstances, the decision of the Syndicate of the University in

Ext.P5 to continue the petitioners under suspension for six months from 23/11/2006 is hereby quashed and it is directed that the petitioners will be permitted to attend the institution in question or in any other institutions administering the same academic course, as may be decided by the Vice Chancellor. This judgment does not, in any manner, interdict disciplinary proceedings against the students by the head of the institution. Let the needful following the cancellation of suspension in terms of this judgment, be done, and the petitioners be permitted to undergo the course at the earliest, on production of a copy of this judgment.

Writ petition is disposed of as above.

THOTTATHIL B. RADHAKRISHNAN, JUDGE

Rp